

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36221

STATE OF IDAHO,)	2010 Unpublished Opinion No. 317
)	
Plaintiff-Respondent,)	Filed: January 20, 2010
)	
v.)	Stephen W. Kenyon, Clerk
)	
ROBERT J. McCORMACK,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Second Judicial District, State of Idaho, Nez Perce County. Hon. Carl B. Kerrick, District Judge.

Order of the district court denying motion for credit for time served, affirmed.

Molly J. Huskey, State Appellate Public Defender; Eric D. Fredericksen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge; GRATTON, Judge;
and MELANSON, Judge

PER CURIAM

Robert J. McCormack appeals from the district court's order denying his motion for credit for time served. We affirm.

Pursuant to a binding Idaho Criminal Rule 11 agreement, McCormack pled guilty to felony driving under the influence, Idaho Code §§ 18-8004(1)(a) and 18-8005(5), and the district court imposed a unified sentence of four years, with one year determinate. Upon completion of the determinate portion of his sentence McCormack was paroled. McCormack violated the conditions of his parole which was thereafter revoked. McCormack filed a motion requesting that the district court grant him credit for the time he spent on parole which the district court denied. At this time, McCormack has completed his four-year sentence.

Idaho Code § 20-228 provides that parole violators shall serve out the sentence “and the time during which such prisoner was out on parole shall not be deemed as a part thereof.” McCormack acknowledges I.C. § 20-228 does not violate the separation of powers doctrine of Art. 2, § 1 of the Idaho Constitution, *Flores v. State*, 109 Idaho 182, 706 P.2d 71 (Ct. App. 1985), impose double jeopardy, *Gibson v. Bennett*, 141 Idaho 270, 108 P.3d 417 (Ct. App. 2005), or violate due process, *Mattoon v. Blades*, 145 Idaho 634, 181 P.3d 1242 (2008). McCormack further acknowledges that his motion was filed as a criminal motion in the jurisdiction in which he was sentenced, rather than as a habeas corpus petition in the jurisdiction in which he is incarcerated and that this Court’s jurisdiction in the criminal matter is limited. *State v. Jakoski*, 139 Idaho 352, 79 P.3d 711 (2003). Additionally, he has failed to provide argument or authority in support of his position under these circumstances. A party waives an issue on appeal if either authority or argument is lacking. *State v. Zichko*, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996). Moreover, as the State notes, McCormack has completed service of the four-year sentence and could receive no relief on this appeal and, therefore the appeal is moot. An issue is moot and will not be considered by an appellate court when there exists a lack of legally cognizable interest in the outcome. *McKinney v. State*, 133 Idaho 695, 709, 992 P.2d 144, 158 (1999).

Based upon the foregoing, the district court’s order denying the motion is affirmed.